

HOUSE BILL REPORT

SHB 1887

As Passed House:
March 15, 2005

Title: An act relating to exemptions to the litter tax.

Brief Description: Modifying exemptions to the litter tax.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Hasegawa, Orcutt and Chase).

Brief History:

Committee Activity:

Finance: 2/22/05, 3/7/05 [DPS].

Floor Activity:

Passed House: 3/15/05, 96-0.

Brief Summary of Substitute Bill

- Exempts from the litter tax the sale of prepared food or drinks by a caterer if the items are served for immediate consumption in or on nonsingle use containers on premises occupied by the customer.
- Modifies the exemption from the litter tax for food or drinks sold on a business's premises to require that the food or drink be sold for immediate consumption indoors or outdoors at the seller's place of business or indoors at an eating area that is contiguous to the seller's place of business.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives McIntire, Chair; Hunter, Vice Chair; Orcutt, Ranking Minority Member; Roach, Assistant Ranking Minority Member; Conway, Ericksen, Hasegawa and Santos.

Staff: Mark Matteson (786-7145).

Background:

The litter tax. The litter tax, at a rate of 0.015 percent, applies to the value of certain products manufactured and sold within the state and to the gross proceeds of certain products sold at wholesale or retail. The tax applies to the following categories of products:

1. food for human or pet consumption;
2. groceries;
3. cigarettes and tobacco products;
4. soft drinks and carbonated waters;
5. beer and malt beverages;
6. wine;
7. newspapers and magazines;
8. household paper and paper products;
9. glass containers;
10. metal containers;
11. plastic or fiber containers;
12. cleaning agents and toiletries; and
13. sundry products of drugstores other than drugs.

Tax receipts are deposited to the Waste Reduction, Recycling, and Litter Control Account. Funds are used by the Department of Ecology for a litter patrol program employing youth to clean up public places and for public education and awareness programs relating to litter control and recycling, including development of markets for recycled products and cost of litter tax compliance. In fiscal year 2004, almost \$7 million in collections were reported.

In 2003, the Legislature enacted legislation exempting food and beverages sold for consumption indoors on the business's premises. The exemption does not explicitly address certain similar situations, such as food courts at malls, where food may be eaten in areas that are adjacent to restaurants themselves but that are not actually owned by the restaurants, or situations where part of the business's premises that is made available for dining is outdoors.

Excise Taxation of Caterers. For excise tax purposes, caterers are treated like other restaurants that sell food at retail. Catering sales are subject to the retail sales tax, irrespective of where the caterer prepares the food, and whether the caterer or the customer provides the ingredients for the food preparation. Caterers are also subject to the litter tax, even if the food and drink is provided in multiuse containers or on servingware that is the property of the caterer.

Summary of Substitute Bill:

Sales of food or drinks are exempt from the litter tax if the items are sold for immediate consumption either indoors or outdoors at a seller's place of business or for immediate consumption indoors in an eating area adjacent to the seller's place of business. Sales of food or drinks are exempt from the tax if the items are sold by a caterer, served in containers that are designed to be used more than one time, and that are served on premises that are occupied or controlled by the customer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This is just a fix to address the exemption under the litter tax with respect to dining on the business's premises. Currently this is only allowed if indoors and the business owns the seating area. This fixes the situation where a business may have a patio or may be a food court.

The second issue here is that there is inconsistency in the Department of Revenue's interpretation of the litter tax application to caterers. Several of the largest caterers in the state have undergone extensive audits but have never been required to pay. Our survey of 18 caterers show that very few pay. Even so, we believe that there may be exposure and so we are very supportive of this bill.

Testimony Against: None.

Persons Testifying: Representative Hasegawa, prime sponsor; Kim Hoff, Washington Restaurant Association.

Persons Signed In To Testify But Not Testifying: None.